NO. 89-227
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

RON BROWN,

Petitioner

v.

VIAL, HAMILTON, KOCH & KNOX, ET AL.,

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS STATE UNAUTHORIZED PRACTICE OF LAW COMMITTEE AND JAMES D. BLUME

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QUESTION PRESENTED

Whether a non-lawyer has a constitutional or other federal right to practice law by advising and representing clients in disputes with insurance companies.

LIST OF PARTIES

Respondent State Unauthorized Practice of Law Committee is a statutorily-created body appointed by the Texas Supreme Court and budgetarily funded in conjunction with the State Bar of Texas. Respondent James D.Blume has never used the name "Jim Bloom." Respondents otherwise defer to the lists of parties provided by Petitioner and the other Respondents.

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JURISDICTION

Petitioner accurately describes the dates of the judgment and order denying rehearing entered by the United States Court of Appeals for the Fifth Circuit. Petitioner incorrectly bases his claim to jurisdiction, however, on 28 U.S.C. § 1257 and incorrectly styles this proceeding as an "appeal."

STATEMENT OF THE CASE

Petitioner Ron Brown and Ron Brown & Associates (hereinafter referred to as "Petitioner" or "Brown") filed a complaint pursuant to 28 U.S.C. § 1331 on November 9, 1987 in the United States District Court for the Northern District of Texas, Dallas Division, alleging violations of the Sherman Act (15 U.S.C. §§ 1 et seq.), violations of the First, Fifth, and Fourteenth Amendments of the United States Constitution, libel, slander and tortious interference of contracts. The district court, after considering motions for dismissal and for summary judgment submitted by the Defendants, entered a Memorandum Order (App. B–1) and Judgment (App. B–14) on May 12, 1988, granting the Defendants' motions. The United States Court of Appeals for the Fifth Circuit affirmed on April 18, 1989, and denied motion for rehearing on May 12, 1989. App. A–1; App. A–11.

Prior to Petitioner's filing of his federal action, the State Committee had sued him in the 160th District Court of Dallas County, Texas and had obtained a judgment (App. D–1) permanently enjoining him from engaging in the unauthorized practice of law by advising and representing clients in the settlement of insurance claims. That injunction was affirmed on appeal by the Texas Court of Appeals, Fifth District. Brown v. Unauthorized Practice of Law Committee, 742 S.W.2d 34 (Tex. App.–Dallas 1987, writ denied) (App. C–1). Writ of error was denied by the Texas Supreme Court on January 22, 1988 and rehearing denied on March 2, 1988. Brown did not apply for writ of certiorari as to that state court judgment.

SUMMARY OF ARGUMENT

The Fifth Circuit's opinion presents no important undecided questions of federal law and is in harmony with other decisions on the same issues. Petitioner's other grounds merely rehash what was decided in earlier state court litigation and are not properly before the Court at this time.

REASONS FOR DENYING THE WRIT

1. There is no important question of federal law which should be settled by the Court in this case.

The district court's summary judgment and the Fifth Circuit's affirmance are consistent with decisions of other federal courts that a non-lawyer does not have a constitutional right or guarantee to practice law, be it under the First, Fifth or Fourteenth Amendments. Guajardo v. Luna, 432 F.2d 1324, 1325 (5th Cir. 1970); Turner v. American Bar Association, 407 F. Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom., Pilla v. American Bar Association, 542 F.2d 56 (8th Cir. 1976). Similarly, courts have also held that state laws prohibiting the unauthorized practice of law do not violate the First, Fifth or Fourteenth Amendments. Guajardo, supra; Lindstrom v. Illinois, 632 F. Supp. 1535, 1538–39 (N.D. Ill. 1986), appeal dismissed, 828 F.2d 21 (7th Cir. 1987). There is nothing novel in Petitioner's attempted refutation of these already-decided constitutional questions.

Nor does Petitioner present any important antitrust issue. The State of Texas, both in the legislative passage of its unauthorized practice of law statute and in the State Unauthorized Practice of Law Committee's enforcement of the statute by judicial proceedings, was clearly acting in its sovereign capacity and within the State Action Doctrine. Hoover v. Ronwin, 466 U.S. 558, 569 (1984) (action of state bar committee immune under State Action Doctrine); Bates v. State Bar of Arizona, 433 U.S. 350 (1977) (state bar immune). Accord Hefner v. Alexander, 779 F.2d 277 (5th Cir. 1985) (State Bar of Texas and its appointees

and directors immune).[1] See also Parker v. Brown, 317 U.S. 341 (1943).

2. The Fifth Circuit's decision is not in conflict with decisions of other courts.

Petitioner claims that two antique decisions conflict with the Fifth Circuit's decision – Goodman v. Beall, 130 Ohio St. 427, 200 N.E. 470 (1936) and Liberty Mutual Insurance Co. v. Jones, 130 S.W.2d 945 (Mo. 1939). Neither case conflicts.

Goodman was merely a non-adversarial case holding under Ohio law that some proceedings before the Ohio Industrial Commission required representatives to be lawyers and some did not. Liberty Mutual merely held under Missouri law that insurance companies could use adjusters. Neither case decided a federal or constitutional question; neither case addressed Texas law; neither case presented the same facts as the present case.

There is no conflict between the Fifth Circuit decision and the two state decisions, much less a conflict concerning a federal question.

3. Petitioner's remaining grounds are not properly before the Court.

The remainder of Petitioner's application is merely a rehash of arguments made, or which should have been made, in the earlier state court litigation. The state court litigation ended on March 2, 1988 (i.e., more than 90 days prior to Petitioner's filing) and hence all such other issues are out of time under 28 U.S.C. § 2101(c) and Supreme Court Rule 20.

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[1] Respondent Blume, being an appointee of the State Committee, hence properly enjoys the same immunity.

CONCLUSION

Petitioner's application should be denied.

Respectfully submitted,

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September 5, 1989